increase the hazard of loss by fire, and a loss should occur, which was not occasioned by the building newly erected, the insurers would have no cause to complain of the act of the assured, but ought in justice to make good the loss. But if this act of the assured was the cause of the loss, and in reality produced it, then as it resulted from his own unauthorized act, involving a breach of those obligations which the observance of good faith imposed upon him, the insurers should not in justice be liable for it, nor would the law impose any obligation upon them to indemnify the assured for a loss which was evidently occasioned by his own misconduct. (*Stebbens* vs. *Globe Insurance Company*, 2 Hall's Rep. 632. 2 Phillips on Insurance, 177.)

Tested by these principles, the defence contained in the answer, if the facts therein stated are true, is sufficient to defeat the plaintiff's action.

In the Supreme Court of Georgia.

WILLIAM DOUGHERTY, PLAINTIFF IN ERROR, *vs.* THE WESTERN BANK OF GEORGIA.

1. In an action on a bank note against the bank which issued it, payable generally on demand, it is not necessary to aver and prove a demand, the suit itself being a sufficient demand.
2. In case, however, of a bank note payable on demand at a particular place, *held*, that a demand at the place is necessary to a suit against the bank at the time designated, or afterwards, (if time is also specified,) and must be averred in the declaration, and proven on the trial; and that the place must be stated in the note with distinctness and precision.
3. *Held*, That the statute of limitations does not apply to bank bills in favor of the bank.

The opinion of the Court, of which we print all that is important, was delivered by

NISBET, J.—Our next inquiry is this, is the rule thus declared, applicable to *bank bills?* We think that the rule of the *commercial law*, applicable to a private note, or to a bill of exchange *payable*

generally on demand, is applicable to a *bank bill*, payable generally on demand, and that is, that averment and proof of demand are not necessary in order to charge the *bank which issues it*. The suit is the demand, and in such a case, the plaintiff is entitled to recover his costs and damages, although the bank has been at all times ready and able to pay. (6 Shep. 240.) By stipulating for no time and place, for the redemption of her bills, she is liable to suit at any time. That is her contract with the holder of her bills. She may, however, stipulate that her notes shall be paid at a place certain, and in that event we are disposed to hold a different rule from that laid down in regard to private paper of like character. In that event, we hold that a demand at the place specified, will be preliminary to a suit, and of course ought to be averred and proved. Instead of throwing upon the defendant the burden of pleading and proving readiness to pay at the place specified, and giving him upon such place and proof, the benefit of a discharge from costs and damages, as in case of notes and bills, we hold that a plaintiff must make demand, at the peril of having his suit dismissed, who seeks to recover upon such a bank note. A failure to make demand at the time (if time is also specified) will not discharge the bank, for the demand may be made afterwards. We are disposed to give the bank the opportunity of redeeming her bills before she is liable to suit—to make the right of action to depend upon the demand by the holder, and the default of the bank in not paying at the time of the demand. And upon the suit after demand and refusal to pay, the plaintiff will be entitled to recover his costs and damages. This rule as to bank bills payable on demand, at a designated place we adopt upon the ground of *public policy*, and it may be made to apply to all future issues of all the banks of the State, for there is nothing to prevent all the banks from making their bills payable at a particular place. The public are interested in this question, as well as stockholders and bill holders. Bank bills subserve the purposes of money in the ordinary dealings of the people. They constitute the circulating medium of the country; they constitute its currency. To preserve that sound, is a paramount object of interest and duty to all departments of the government.

Inasmuch as that is indefinitely diffused—consisting of a vast number of bills of different denominations, and in the hands of the people at divers, remote and unascertainable points; it is unreasonable to hold the bank bound to go the holder, with a tender to redeem, or to hold it in default if it does not make the tender. On the other hand, it is no unreasonable requirement to constrain the the holder to present the bills at the place designated, before suit. It is his interest not to demand redemption, so long as he feels that the notes are sound, because it is his interest to maintain them in circulation, and thereby preserve the credit of the bank. And why should he sue when the object of the suit can be accomplished by a demand. To avoid demands, and thus maintain their issues in circulation, is the policy of the banks. This policy is best promoted by prompt payment when demands are made. It is therefore a reasonable presumption that banks able to pay, will promptly pay upon demand. The credit of a bank is as delicate as the honor of a lady. Upon that credit, is more or less dependent every interest of property, industry and trade. It would not, therefore, be wise to subject it to be impaired by unnecessary suits, instigated it may be, by the cupidity of private citizens, or the lust of rival institutions. Whilst we thus guard the interests of the banks, and through them the interest of the public at large, it is necessary to look also to the interest and convenience of individuals. The holder should be notified with *definiteness* and *precision*, of the place where he is to make demand. It is not enough to leave him to infer that he is to make demand at the counter of the bank. For although its locality is fixed by law, and may be a matter of public notoriety, yet it may not in fact, be known to him. He should be informed on the face of the bill, not in *general* terms, but by a *precise designation*. One of the bills in this case, is payable at *Rome;* that is not sufficient. Like *Imperial Rome*, our *Georgia Rome* is said to sit upon seven hills; upon which of these a plain man from some distant hamlet or farm house, is expected to make demand, might be difficult for him to determine. And when he has made a demand, as best he may, it may become a question of legal contestation, whether he has made it in the right place.

It should have been made payable at the *banking house of the institution at Rome*, or at the house of *A. B. & Co., at Rome*, or at some place so clearly designated as to leave no doubt or uncertainty as to its identification. This bill is therefore a bill payable generally on demand, and so we rule. We hold, therefore, as to both the bills, that the Court erred in excluding them on the ground that no demand was averred or proven.

It was objected to the admissibility of these bank bills, in evidence farther, that upon their face they were barred by the statute of limitations. The Court sustained this objection also. More than the statutory term had expired, commencing at the respective dates of the bills. Upon exception to this ruling, we are now to determine whether our statute of limitations applies to *bank* notes in favor of the bank issuing them. We are confident that the bank is not protected by the lapse of the statutory term, commencing with the note, as the Court below held, and that as a general rule, the statute had no application to bank notes. The reason is in the language of *Ld. Mansfield*, in *Miller* vs. *Race*, "that these bills are not like notes of exchange, mere securities or documents for debts, nor are so esteemed, but are treated as money in the ordinary course and transactions of business by the general consent of mankind," (1 Burr. 457). Whilst bank notes occupy for some purposes the position of securities, yet in addition, they are considered, and subserve the purpose of *money*. *Lord Hardwicke* in *Southcoat* vs. *Watson*, speaking of a note of the *Bank of England*, says "it has been said that these ought to be considered only as a security for money, but I am of opinion they must be taken according to the common usage and notion of bank notes, which are always considered as cash, and made payable to bearer." (3 Atk. R., 232.) See also, 11th Wend. R., 101. *Bullard* vs. *Bell*, 1 Mason's R. 252.) *Solomons* vs. *The Bank of England*, 13 East R. 135. Note—Story on Prom. Notes, § 501. They are payable on demand by authority of the charter; (*Prince*, 131). They are negotiable by delivery; they pass in a bequest of the testator's *money* or *cash;* (1 Scho. & Lefr. 318, 319; 11 Vesey. 662). Possession is *prima faciæ* evidence of property in them;

(Chitty on Bills, 523; 2 Campb. R. 5; 1 Camp. R. 551). The holder is not affected by the fraud of a previous holder in obtaining them, unless he is in privity with him, (13 East R. 135.) They are *never over-due*, and not liable to any equities between the bank and parties who have subsequently received them, or between intermediate parties; (Story on Prom. Notes, § 501). These qualities fit them for currency, and some of them distinguish them from the mere evidences of a debt. They are not *money* by authority of law, but are considered so by usage and the course of business, and by the consent of the people. They are issued for the purpose of being used as money by the banks, and *the State* is a party to the consent that they shall so be considered, because the power to issue is a grant from the *Legislature*. Thus made money practically, it would destroy their monetary character to apply to them in their character of securities, for the payment of money, a limitation. If the bank is protected by a limitation, then is that protection an injury, for it would have the effect of preventing the circulation of a bill for a time longer than six years. Let that be understood to be the law, and inevitably, almost every bill issued would be returned once in six years. A protracted circulation, which is an object so desirable to banks, would thus be impossible. How can a limitation law be applied to that, which, without much perversion of truth, may be said to be like *Melchesidek*, without beginning of days or end of life. It has no beginning upon its face, for its date is no evidence of the time it was issued; it may bear date to-day, and be issued to-morrow, or next year; or it may be issued to-day, and returned to-morrow, and re-issued the next day; or it may not be issued at all, until barred by time, commencing to run from its date. If it could be barred at all, it would seem that the starting point of the statute ought to be the time of its issue; and how shall the world so know *that*, as to exercise a necessary diligence in suing within time? Nor has it an end of life, because it is never over-due. If, as Judge Story says, it is never over-due, no matter when issued, or how often re-issued, but it is always an immature representation of a legal tender; when shall the statute commence to run? Shall it be said from the time

of a demand, and a refusal to redeem? If so, then an insolvent bank, by which, I mean a bank which is unable to redeem its bills, is upon a better footing than one whose credit is good; that is to say, the former is protected by the statute, the latter is not. Whatever of virtue there may be in that idea, we shall not now determinine, as such determination is not made necessary by this case. We determine that a bank note is not barred by the lapse of the statutory term, commencing at its date, and that generally the statute of limitations has no application to bank notes. Let the judgment on all the points be reversed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

Supreme Court of Indiana, May Term, 1853.

Administrator—Probate Court.—An administrator is not authorized by the R. S. 1843, to take possession of the real estate of the intestate if the heirs are present.

An order of the Probate Court for the leasing of real estate of an intestate upon the petition of the administrator, is erroneous, if the heirs of the intestate being infants, did not appear to the action, and no guardian *ad litem* was appointed to answer for them. *Comparet* vs. *Randall.* PERKINS J.

Sheriff's Return—Levy—Judgment of Revivor—Sale of Real Estate without notice to heirs.—The return upon a *fi fa*, that it was levied "upon the property of" the execution defendant, without designating the kind, quality or value, and accompanied by no other paper or memorandum to remove the uncertainty, is void for uncertainty.

A levy is *prima faciæ* a satisfaction of the execution; but it may be shown to have proved to be not an actual one.

Judgment against A and B in the Circuit Court. The judgments having become dormant, a *scire facias* was issued on each of them and served on B.. and there was a judgment of revivor. That in the first case was as follows: "On motion it was ordered that the judgment heretofore rendered in this case, be revived against B,—the former judgment having been rendered against B and A,—and the defendant in mercy, &c. The